

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 399 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SANSTOSH SUKHDEV PATIL

Versus

COMMISSIONER OF POLICE, SURAT CITY, SURAT.

Appearance:

MR ANIL S DAVE for Petitioner

AGP MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/09/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. Anil S. Dave for the petitioner and Learned A.G.P. Mr. Samir Dave for the respondent Nos. 1 to 3.

2. The detention order dtd. 14/12/98 passed by the respondent No. 1 - Commissioner of Police, Surat City, Surat against the petitioner-detenu in exercise of powers conferred vide Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short), is challenged in the present petition under Article under Sec. 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner under Sec. 9 (1) of PASA, copy of which is produced at Annexure - C to the petition, indicate that all three criminal cases have been registered against the petitioner-detenu for the offences made punishable under Indian Penal Code. That the said offences are alleged to have been committed on 14/1/97, 24/6/97 and 7/8/98, respectively. The grounds of detention further indicate that two witnesses on assurance of anonymity have given statement on 9/11/98 and 10/11/98 respectively. That in consideration of said material, the respondent No. 1 Commissioner of Police, Surat City, Surat, has come to the conclusion that the petitioner-detenu is a "dangerous person", within the meaning of Sec. 2 (c) of PASA. That the petitioner having been released on bail on 18/8/98, is likely to continue his anti-social activity which is likely to affect prejudicially to the maintenance of public order and as such the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended that on account of delay in taking action, live link between the alleged criminal activity of the petitioner and the action taken by the authority was snapped and thereby the subjective satisfaction reached by the authority is vitiated and has rendered the impugned order invalid.

5. On scrutiny of papers, learned A.G.P. Mr. Samir Dave could not dispute the fact that last incident of criminal case registered against the petitioner on 7/8/98 and thereafter the petitioner was released on bail on 18/8/98. That though two witnesses on assurance of anonymity have given information regarding the anti-social activity of the petitioner vide statement dtd. 9/11/98 and 10/11/98 in respect to the incident dtd. 23/10/98 and 5/11/98, the action of passing the detention order appears to have been taken as late as on 14/12/99. That the original file examined by the learned A.G.P., does not disclose any explanation for such delayed action.

6. In the matter of Elesh Nandubhai Patel Vs.

Commissioner of Police, Ahmedabad, reported vide 1997 (1) G.L.H. 381, this Court has expressed the view after following judgement of Apex Court in the matter of Jagan Nath Biswas Vs. State of West Bengal, reported in AIR 1975 SC 1516, that if the live link of alleged criminal activity of the petitioner is snapped on account of lapse of time before taking action and there is no satisfactory explanation, then the subjective satisfaction reached by the authority is vitiated rendering the impugned order illegal.

Following the said dictum, in the instant case, it is required to be held that the impugned order is illegal on account of delay in taking action against the petitioner, as discussed hereinabove.

7. On the basis of the foregoing discussions, the petition is allowed. The detention order dtd. 14/12/98 passed by the respondent No. 1 - Commissioner of Police, Surat City, Surat, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Santosh Sukhdev Patil is ordered to be set at liberty forth, if not required in any other case.

Rule to that extent made absolute.

Rafik*